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HUMAN RIGHTS COMMITTEE

Sixty-sixth session

SUMMARY RECORD OF THE 1754th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 July 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-42865 (E)

The meeting was called to order at 10.40 a.m.

OPENING OF THE SESSION

1. The CHAIRPERSON declared open the sixty-sixth session of the Human Rights Committee. She believed she was speaking for all members of the Committee in expressing her regret at the resignation of Mr. Buergenthal, who had made a valuable contribution to the Committee's work.

STATEMENT BY THE DEPUTY HIGH COMMISSIONER FOR HUMAN RIGHTS

2. Mr. RAMCHARAN (Deputy High Commissioner for Human Rights) said that the High Commissioner for Human Rights, Mrs. Robinson, who was detained by other engagements (the Conference of the Organization for African Unity at Algiers), had requested him to convey to the Committee her best wishes for the success of the sixty-sixth session. She had also expressed the hope that she would have the opportunity to meet the members of the Committee in the course of the session. On her behalf, he invited the Committee to an informal meeting with the Office of the High Commissioner in its new premises at the Palais Wilson. The Office's move to the new location had on the one hand confirmed the scope of United Nations human rights activities and on the other hand had added a new impulse to those activities on the eve of the third millennium.

3. Reviewing the historical background of the human rights instruments of the United Nations, which had been grouped together under the title of International Bill of Human Rights, he said that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights had been considered from the start as essential instruments for the promotion and protection of human rights. The two Committees created under those instruments had exercised their mandate during the difficult cold war period, which had demanded wisdom, patience and judgement. The current difficulties were related mainly to development problems, and the effective implementation of international human rights standards depended on achieving progress on that issue and on taking due account of the obstacles encountered by developing countries.

4. Generally speaking, the Office of the High Commissioner considered that the work of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights lay at the heart of the efforts by the United Nations and the international community as a whole to defend the rights of the human being. They also played an essential role in facilitating the establishment by the States parties of internal mechanisms for the promotion and protection of human rights and the adoption of constitutional, legislative, administrative, educational and other measures aimed at applying the standards enshrined in the Covenants at the national level. The follow-up mechanisms of the treaty bodies were also of particular importance. In that connection, the ILO Committee of Experts on the Application of Conventions and Recommendations, a body which played a pioneering role in monitoring the application of international labour standards, had clearly emphasized how vital it was for States, regardless of their political systems and levels of development, to fulfil their international obligations. The Office of the High Commissioner was in full agreement with that view and considered that monitoring the implementation by States parties of norms to which they had

committed themselves, in very diverse historical, political, economic, social and cultural circumstances, constituted an essential task on the eve of the third millennium.

5. As far as the material difficulties encountered by the Committee in carrying out its mandate were concerned, the Office of the High Commissioner was fully aware of the situation. The same problems arose throughout the Organization, which was being asked to do more and more with less and less resources. He had recently submitted to the appropriate departments the Office's draft programme budget for the 2000-2001 biennium, in which Mrs. Robinson, in consultation with the Committee, had requested funding for an additional post in the communications processing section and another in the section responsible for follow-up activities. The Advisory Committee on Administrative and Budgetary Questions and the Committee for Programme and Coordination held out little hope, however, that those requirements could be met in the current climate of budget stringency. Meanwhile, Mrs. Robinson had contacted the trust fund set up recently to find additional resources for the Committee.

6. Regarding the financing of interpretation services for the meetings of the Committee's bureau, an issue which the Chairperson had raised at the eleventh meeting of the Chairpersons of the Treaty Bodies, the Office had decided, in view of the difficulties encountered by the conference services in meeting that request, to finance from its own budget the cost of interpretation at the three meetings of the Committee bureau during the current session.

7. Concerning the processing of communications received under the Optional Protocol, he considered that all individuals who submitted their cases to the United Nations had the right to have them examined. Every effort should therefore be made to improve the current situation, so as to overcome the backlog and consider communications more promptly in future. In addition, the Office was keen to find ways of making the Committee's documents available on time in all the working languages.

8. He welcomed the recent but much delayed publication, in the series of official documents of the General Assembly of the second volume of the Committees report on its fifty-second, fifty-third and fifty-fourth sessions (A/50/40), and was pleased to say that the second volume on the fifty-fifth, fifty-sixth and fifty-seventh sessions (A/51/40) would be published shortly. Those documents reflected the importance of the Committee's work, as they contained the decisions taken under the Optional Protocol (communications) and were very useful to researchers, academics and other human rights specialists.

9. Lastly, the High Commissioner for Human Rights was currently examining the possibility of augmenting the resources of the treaty bodies through voluntary funds. The treaty bodies played a unique role in helping States parties to set up structures for the promotion and protection of human rights. The Office was moreover considering publishing a document covering the essence of the Covenant, the Committee's legal interpretations and its general comments. The purpose of the document would be to make States parties aware of the importance of implementing the Covenant, within the framework of a more

global strategy to promote human rights, the maintenance of peace and development. He invited the Committee to reflect on the matter during the current session.

10. The CHAIRPERSON thanked the Deputy High Commissioner for Human Rights. As he had rightly stated, the Committee's work lay at the heart of the system of human rights protection. If the heart stopped, the whole system broke down. It was absolutely vital, therefore, to strengthen the secretariat in support of the Committee's work. She hoped that the Deputy High Commissioner's comforting words would lead to some real solutions for the current difficulties.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CCPR/C/138)

11. The agenda (CCPR/C/138) was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

12. The CHAIRPERSON invited Committee members to adopt the programme of work they had before them, in an informal document in English only. The date needed adding on which the Committee would adopt the draft lists of issues concerning the reports scheduled for consideration at the next session.

13. It was so decided.

14. Mr. YALDEN (Chairman and Rapporteur of the pre-sessional Working Group) said that the Working Group, consisting of Lord Colville, Ms. Evatt, Mr. Kretzmer, Ms. Medina Quiroga, Mr. Pocar, Mr. Solari Yrigoyen, Mr. Wieruszewski and himself, had held nine meetings between 5 and 9 July 1999. He wished to take the opportunity to thank the secretariat for its support at a time of heavy work demands.

15. Regarding the communications submitted under the Optional Protocol, the Working Group had adopted two decisions in favour of the admissibility of communications, five recommendations in favour of the inadmissibility and eight recommendations concerning the Committee's findings.

16. Regarding the questions concerning article 40 of the Covenant, the Working Group had established the list of issues to be taken up in connection with the fourth periodic reports of Mexico, Poland and Romania, which would be considered during the current session. It had also drawn up draft lists of issues for the fourth periodic reports of Morocco and Norway and the second periodic report of the Republic of Korea, which the Committee would be considering at its sixty-seventh session. He suggested that the Committee should proceed without delay to adopt the draft lists of issues for the reports to be considered at the current session and later on in the session the draft lists for the reports to be considered at the sixty-seventh session. Regarding consideration of the initial report of Cambodia, scheduled for the current session, he reminded the Committee that it had adopted the relevant list at its sixty-fifth session. That was also the case for the third periodic report of Cameroon, which would be considered at the sixty-seventh session. The Working Group had not been able to adopt draft lists, however, for the reports of Kyrgyzstan, Venezuela and Yugoslavia, as

the reports had not been available at the time in the right languages. The Committee thus still had to decide when it would consider those reports.

17. The Working Group had discussed ways of implementing the Committee's recent decision to send the list of issues to the States parties concerned during the session preceding that in which their report would be considered. The secretariat was planning to send all States parties a note informing them of the Committee's new approach in that respect.

18. Lastly, the Working Group had taken note of the country analysis prepared by the secretariat for Norway and had agreed that such a document was useful. The Committee would need to decide whether it wished the secretariat to prepare such documents systematically.

19. The CHAIRPERSON said that the initial report of Kuwait should in principle be considered at the sixty-eighth session in New York.

20. She then invited Committee members to adopt the draft lists of issues prepared by the Working Group, starting with Poland (CCPR/C/66/Q/POL/1/Rev.1 [Future]).

Draft list of issues to be taken up in connection with the consideration of the fourth periodic report of Poland (CCPR/C/Q/POL/1/Rev.1 [Future])

21. Lord COLVILLE, introducing the draft, said that the Working Party had tried to make the list as concise as possible. It had taken account of all the elements brought to its attention by non-governmental organizations. In Poland, the situation was generally satisfactory. It was very heartening that Poland had a Commissioner of Citizens' Rights who, as a former member of the Human Rights Committee, knew the situation very well. Unusually, he exercised not only advisory but also executive authority and could refer violations directly to the Constitutional Court. Through his actions, numerous problems had already been solved.

22. The CHAIRPERSON invited Committee members to consider the draft paragraph by paragraph.

Constitutional and legal framework within which the Covenant is implemented (art. 2)

Paragraph 1

23. Mr. AMOR said that the concept of invalidation used in the second question of paragraph 1 referred to a very precise legal situation. Courts were by no means able to invalidate laws in all legal systems. Therefore he proposed that the word "invalidate" be replaced by "oppose", which would be more neutral.

24. Lord COLVILLE said that he understood Mr. Amor's concern but that the Committee wished to know whether the Courts had the power to invalidate laws incompatible with the Covenant, and not merely to oppose them.

25. Mr. ZAKHIA said that a compromise would be to add the words "or oppose" at the end of the sentence.

26. Mr. LALLAH said that, given the diversity of legal systems, the Committee risked complicating matters by trying to be too precise. It might be better to leave the wording of the question as it was and to let the Polish delegation draw the necessary distinctions.

27. Ms. CHANET proposed that the question be formulated in a more neutral manner by asking what powers the courts had in cases where laws were incompatible with the provisions of the Covenant.

28. The CHAIRPERSON said that if there were no objections she would take it that the Committee members agreed with Ms. Chanet's proposal.

29. It was so decided.

30. Paragraph 1, as amended orally, was adopted.

Paragraphs 2, 3 and 4

31. Paragraphs 2, 3 and 4 were adopted.

Non-discrimination and equality of the sexes (arts. 3 and 26)

Paragraph 5

32. Mr. AMOR proposed adding the following question to paragraph 5: "Does religion affect the real condition of women in Poland?"

33. Mr. ZAKHIA while appreciating the shrewdness of Mr. Amor's proposal, noted that the influence of religion was of interest to the Committee only insofar as it affected the laws of the country. He proposed instead that the question be worded more specifically to ask what influence religion had amongst others on personal status.

34. Mr. LALLAH preferred to leave paragraph 5 as it was. However, that did not prevent Mr. Amor from raising the question orally with the Polish delegation if he so wished.

35. Mr. YALDEN said that he would agree with the addition of the question proposed by Mr. Amor if there was a special problem in Poland's case. Otherwise, he would prefer to leave the draft as it stood.

36. Lord COLVILLE said that the only specific issue worth raising, namely abortion, was already on the list. If Mr. Amor wished to ask further questions relating to the effects of religion on the condition of women, he would be happy to add them to the draft, but for the time being he could see none.

37. Mr. AMOR said that the Covenant secured equality between women and men. It was nevertheless true that in practice women were the victims of many-faceted discrimination based on religious considerations. In view of the

Committee's mandate under the Covenant, such a situation could not be ignored, and it would be useful in future to include in all the lists of issues a question focusing on the condition of women in relation to religion in different countries.

38. Mr. SOLARI YRIGOYEN said that all religions influenced the situation of women, but that the influence varied from one country to another and one religion to another. It would therefore be of no use to ask all States the same question. It would be preferable to raise the issue orally in order to be able to take account of individual circumstances.

39. The CHAIRPERSON said there would certainly be other opportunities to discuss the matter. She felt that Committee members would prefer Mr. Amor's question to be put orally. If there were no objections, she would consider that the Committee wished to leave paragraph 5 unchanged.

40. Paragraph 5 was adopted.

Paragraphs 6 and 7

41. Paragraphs 6 and 7 were adopted.

Right to life (art. 6)

Paragraph 8

42. Paragraph 8 was adopted.

Right to liberty and security of person, treatment of prisoners and other detainees (arts. 7, 9, 10 and 13)

Paragraph 9

43. Paragraph 9 was adopted.

Paragraph 10

44. Ms. CHANET said that the subject of paragraph 10 of the list was covered in paragraphs 67 to 81 of the report, not paragraphs 65 to 81. The question should be amended accordingly.

45. Paragraph 10, as amended orally, was adopted.

46. Ms. CHANET said that, in view of the changes introduced in the Code of Criminal Procedures in 1996, it would be worth including a question in the list concerning the progress made to date with the reform of the pre-trial detention system, and more precisely on whether pre-trial detention was decided exclusively by the judge or whether it was subject to his supervision, whether a detainee was guaranteed the assistance of a lawyer, and what the situation was regarding the length of pre-trial detention.

47. Lord COLVILLE said he could see no difficulty with the inclusion of Ms. Chanet's proposed question in the list of issues. However, since the

report of the State party was in many respects out of date and since a new Code of Criminal Procedure had been introduced, it would be worth checking whether the information concerned was perhaps already available.

48. The CHAIRPERSON said that Committee members seemed to agree to the addition of Ms. Chanet's question to the list.

49. It was so decided.

Paragraphs 11 and 12

50. Paragraphs 11 and 12 were adopted.

Right to a fair trial (art. 14)

Paragraph 13

51. Paragraph 13 was adopted.

Right to privacy (art. 17)

Paragraphs 14 and 15

52. Paragraphs 14 and 15 were adopted.

Right to freedom of expression (art. 19)

Paragraphs 16 and 17

53. Paragraphs 16 and 17 were adopted.

Freedom of religion (art. 18)

Paragraph 18

54. Mr. AMOR said that the first question as it stood was of no practical use. Since it added nothing to the following question, he proposed deleting it.

55. Paragraph 18, as amended orally, was adopted.

Protection of the child (art. 24)

Paragraph 19

56. Paragraph 19 was adopted.

Right to participate in the conduct of public affairs (art. 25)

Paragraph 20

57. Paragraph 20 was adopted.

Right to equality and non-discrimination; rights of persons belonging to minorities (arts. 26 and 27)

Paragraph 21

58. Paragraph 21 was adopted.

Paragraph 22

59. Mr. YALDEN said that, as the Committee was particularly concerned by the situation of the Roma, it would be useful to add the words "notably the Roma" at the end of the paragraph.

60. Paragraph 22, as amended orally, was adopted.

Dissemination of information about the Covenant (art. 2)

Paragraph 23

61. Paragraph 23 was adopted.

62. The draft list of issues to be taken up in connection with the consideration of the fourth periodic report of Poland (CCPR/C/66/Q/POL/1/Rev.1 [future]), as amended orally, was adopted.

Draft list of issues to be taken up in connection with the consideration of the fourth periodic report of Romania (CCPR/C/66/Q/ROM/1/Rev.1 [future])

Constitutional and legal framework within which the Covenant is implemented (arts. 2 and 4)

Paragraphs 1 and 2

63. Paragraphs 1 and 2 were adopted.

Paragraph 3

64. Mr. LALLAH proposed replacing "application of human rights principles" with "application of human rights obligations undertaken by the State party under the Covenant".

65. Paragraph 3, amended as proposed by Mr. Lallah, was adopted.

Gender equality in the enjoyment of rights and the principle of non-discrimination (arts. 3 and 26)

Paragraphs 4, 5, 6 and 7

66. Paragraphs 4, 5, 6 and 7 were adopted.

Right to life and prevention of torture (arts. 6 and 7)

Paragraph 8

67. Paragraph 8 was adopted.

Paragraph 9

68. Mr. SCHEININ proposed replacing the term "citizens" with "individuals".

69. Paragraph 9, amended as proposed by Mr. Scheinin, was adopted.

Paragraph 10

70. Paragraph 10 was adopted.

Protection against arbitrary interference with privacy, family, home or correspondence (art. 17)

Paragraphs 11 and 12

71. Paragraphs 11 and 12 were adopted.

Freedom of thought, conscience and religion (art. 18)

Paragraph 13

72. After an exchange of views between Mr. SCHEININ and Mr. YALDEN concerning the possibility of including a question about alternative solutions to military service, it was agreed that the issue would be raised orally.

73. Mr. LALLAH further proposed replacing the first sentence of paragraph 13 with the following: "What are the implications of registration or non-registration for the exercise of religious freedom?"

74. Paragraph 13, as amended orally, was adopted.

Freedom of expression (art. 19)

Paragraph 14

75. Paragraph 14 was adopted.

Freedom of assembly and association (arts. 21 and 22)

Paragraph 15

76. Paragraph 15 was adopted.

Protection of children (art. 24)

Paragraph 16

77. Paragraph 16 was adopted.

Non-discrimination and protection of minorities (arts. 26 and 27)

Paragraphs 17 and 18

78. Paragraphs 17 and 18 were adopted.

Dissemination of information about the Covenant (art. 2)

Paragraph 19

79. After an exchange of views between Mr. POCAR, Lord COLVILLE and Ms. EVATT regarding repetitions in paragraphs 3 and 19, the CHAIRPERSON said that the second part f the sentence in paragraph 3 would be deleted and that paragraph 19 was adopted as it stood.

80. The draft list of issues to be taken up in connection with the consideration of the fourth periodic report of Romania (CCPR/C/66/Q/ROM/1/Rev.1 [FUTURE]), was adopted, subject to the agreed oral amendments.

Draft list of issues to be taken up in connection with the consideration of the fourth periodic report of Mexico (CCPR/C/66/Q/MEX/1/Rev.2 [FUTURE])

The right to self-determination (art. 1)

Paragraph 1

81. Paragraph 1 was adopted.

Constitutional and legal framework within which the Covenant is implemented (art. 2)

Paragraphs 2, 3 and 4

82. Paragraphs 2, 3 and 4 were adopted.

Non-discrimination and equality of the sexes (arts. 3 and 26)

Paragraphs 5 and 6

83. Paragraphs 5 and 6 were adopted.

Right to life, liberty and security of person, treatment of prisoners and other detainees, right to a fair trial (arts. 6, 7, 9, 10 and 14)

84. Paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 were adopted.

Freedom of movement and the rights of aliens (arts. 12 and 13)

Paragraph 15

85. Paragraph 15 was adopted.

Freedom of religion (art. 18)

Paragraph 16

86. Mr. AMOR asked why the question of conscientious objectors was raised in the list of issues to be taken up in connection with the consideration of the fourth periodic report of Mexico when it did not appear in the list of issues to be taken up in connection with the consideration of the fourth periodic report of Romania.

87. The CHAIRPERSON replied that the fourth periodic report of Mexico contained contradictory information in that respect and clarification was necessary.

88. Mr. LALLAH proposed that the title of the paragraph be modified as follows: "Freedom of conscience and religion".

89. Paragraph 89 was adopted, subject to Mr. Lallah's proposed amendment.

Freedom of expression

Paragraph 17

90. Paragraph 17 was adopted.

Protection of the family and children (arts. 23 and 24)

Paragraph 18

91. Paragraph 18 was adopted.

Non-discrimination and protection of minorities (arts. 26 and 27)

Paragraphs 19 and 20

92. Paragraphs 19 and 20 were adopted.

Dissemination of information about the Covenant (art. 2)

Paragraph 21

93. Paragraph 21 was adopted.

The draft list of issues to be taken up in connection with the consideration of the fourth periodic report of Mexico (CCPR/C/66/Q/MEX/1/Rev.2 [FUTURE]), as orally amended, was adopted.

94. Ms. EVATT wished to know when the lists of issues to be taken up in connection with the reports to be considered in October would be ready.

95. The CHAIRPERSON replied that the translations of the lists would be ready by 14 July 1999.

96. Mr. AMOR asked whether the Cambodian delegation would be present for the consideration of the initial report of Cambodia.

97. The CHAIRPERSON said that the Cambodian Government had given assurances that it would send a delegation.

Draft Consolidated Guidelines for State Reports under the International Covenant on Civil and Political Rights (CCPR/C/GUI/1)

98. Lord COLVILLE, the author of the document, introduced the latest version of the draft consolidated guidelines. He said he had completely reorganized the text, incorporating the very helpful modifications proposed by the other members of the Committee. The version before the Committee, which had been the object of very broad consultations, still called for a number of comments. Firstly, the only reference to other documents which had been kept appeared in section 3 and concerned the core document (a code beginning with HRI/CORE). The core document constituted the initial part of the report that a State party was required to submit under the various international human rights instruments to which it was a party. Secondly, some Committee members had suggested inserting before section 2 of the draft a note intended to call States parties' attention to the Committee's general comments, in order to ensure that they were taken into account in the preparation of reports.

99. Thirdly, with regard to the periodic reports that followed the initial report (section 7), the prevailing opinion among the Committee seemed to be that those periodic reports submitted after the initial report should take as their starting point the concluding observations issued by the Committee following the initial report, and that there was therefore no reason to draw a distinction between the second report and subsequent reports. If there were no concluding observations, the summary records of the Committee's consideration of the previous report could serve as the starting point (see section 8: Points for guidance). In short, the new system would considerably simplify the whole task of preparing reports for States parties, since there would be only two sets of rules to follow, one for initial reports and one for subsequent reports.

100. The CHAIRPERSON invited the Committee to consider the draft consolidated guidelines paragraph by paragraph.

A. Initial reports

Introduction

101. Mr. POCAR proposed that the word "initial" in the first sentence be moved to the end of the second sentence in the paragraph.

102. Lord COLVILLE agreed.

2. The purpose of the report

103. Mr. LALLAH said that States parties should be asked in that section to describe any factors or difficulties hindering the implementation of the Covenant.

104. Lord COLVILLE said that the factors and difficulties were mentioned in paragraph 4 of section 4 under the heading "Contents of the Initial Report". Mentioning them under "Purpose of the Report" might alter the balance of the document. He would, however, abide by the Committee's decision.

105. Ms. EVATT felt that section 2 should be left as it was and that it was useless merely to repeat the text of article 40 of the Covenant. Burdening the text of item 2 unduly might end up missing the point.

106. Mr. AMOR endorsed the views of Ms. Evatt and Lord Colville.

107. Mr. POCAR wished to change the last subparagraph of section 2 to call for an account of the progress already made in the enjoyment of Covenant rights by "the people of the country or within its jurisdiction".

108. The CHAIRPERSON took it that the Committee was in favour of amending section 2 as suggested by Mr. Pocar, without adding a reference to factors and difficulties.

3. The core document

109. Mr. AMOR suggested making the wording of paragraph 2 of section 3 more flexible in order to leave the Committee the option of requesting additional information or not, and he proposed stating that the Committee might not necessarily require additional information.

110. Lord COLVILLE could see no difficulty with replacing the word "will" by the word "may".

111. The CHAIRPERSON said that section 3 would be amended as suggested by Lord Colville.

4. Contents of the Initial Report

112. Ms. CHANET wondered whether it was really necessary to say in sub-heading (a) of paragraph 1 that "these Guidelines should be taken fully into account", for that would seem to go without saying.

113. Lord COLVILLE said that in his view the attention of those responsible for compiling a State party's report should be drawn to the guidelines, but he was willing to admit that such a reminder might be placed elsewhere in the text, for example at the beginning.

114. Mr. YALDEN agreed with Lord Colville.

115. Mr. AMOR also considered that it was worth keeping the message conveyed in paragraph 1 (a), but thought that it should be formulated more strongly. He proposed the wording: "When preparing the report, the States parties should take particular account of the following guidelines".

116. Lord COLVILLE offered to alter the text so as to place at the beginning of the draft guidelines a paragraph stating that the guidelines should be followed by States parties in the preparation of initial and all subsequent periodic reports, and to delete paragraph 1 (a) of section 4.

117. The CHAIRPERSON noted that the Committee agreed.

118. Ms. EVATT suggested adding a mention of the institutions responsible for examining complaints of violations to subparagraph (d).

119. Lord COLVILLE said that he would work out a new wording for paragraph 1 (d) with Ms. Evatt.

120. The CHAIRPERSON said that the Committee would continue its consideration of the draft consolidated guidelines at its following meeting.

The meeting rose at 1.05 p.m.

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HUMAN RIGHTS COMMITTEE

Sixty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1755th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1755/Add.1.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.99-42877 (E)

The meeting was called to order at 3.10 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3) (continued) (CCPR/C/GUI/1)

1. The CHAIRPERSON invited the Committee to continue its consideration of the draft consolidated guidelines for State reports under the Covenant (CCPR/C/GUI/1).

2. Lord COLVILLE, speaking as the author of the document and referring to section 4 (1) (f), suggested that subparagraph (f) should be shortened to read: "Paragraph 4 of the core document should be amplified by describing the process of preparation of the report and the extent of consultation which has taken place." He further suggested the insertion, after section 4 (1) (a), of a new subparagraph reading: "The Committee's general comments should be taken into account."

3. Those suggestions were approved.

4. Mr. AMOR, referring to section 4 (2), remarked that the guideline concerning reservations or declarations applied not only to initial reports but also to subsequent periodic reports. In the interests of logic, it might be preferable to divide the whole document into three sections, the first containing guidelines of that kind, the second containing those which applied exclusively to initial reports and the third containing those which applied exclusively to periodic reports.

5. Mr. ZAKHIA supported that suggestion.

6. Lord COLVILLE considered that it would be useful to spell out everything the Committee wanted to be included in the initial reports. The same guideline could, if necessary, be repeated with respect to periodic reports.

7. Ms. EVATT and Mr. WIERUSZEWSKI associated themselves with that view.

8. The CHAIRPERSON noted a general preference in favour of leaving the layout of the draft unchanged.

9. Mr. LALLAH suggested that the guideline on "other restrictions or limitations" (section 4 (3)) should be moved to become subparagraph (g) of section 4 (1). Wherever permissible restrictions or limitations were imposed in relation to any article of the Covenant, the State party should, in its initial report, explain the reasons for them and the manner in which they were applied. In addition, a separate guideline on derogations under article 4 of the Covenant, applicable to both initial and periodic reports, should be included somewhere in the draft.

10. Lord COLVILLE endorsed both those suggestions and expressed his readiness to draft a paragraph on derogations, to be inserted possibly after section 8 (3).

11. Mr. POCAR, remarking that the "factors or difficulties" referred to in section 4 (4) formed a different subject from the "discrimination" mentioned

later in the same paragraph, suggested that the paragraph should be divided into two separate parts. He also drew attention to the need for more consistent use of the words "should", "shall" and "must" throughout the draft.

12. Mr. BHAGWATI supported the suggestion that section 4 (4) should be divided.

13. Lord COLVILLE endorsed that suggestion, adding that the second part of the paragraph (appearing at the top of page 5) would seem to relate both to "factors or difficulties" and to "reasons for any discrimination". As to Mr. Lallah's second point, he would prefer to attend to it once the Committee had completed its consideration of the draft as a whole.

14. In response to a suggestion by Mr. Zakhia, he said that the new separate subparagraph relating to "discrimination" could also refer to any other difficulties the State party might have in implementing the Covenant.

15. Mr. BHAGWATI, referring to section 4 (5), suggested that the words "relevant to these Guidelines" in the first sentence should be replaced by "relevant to the Covenant rights".

16. Mr. KLEIN, supported by Ms. EVATT, thought that it would be more correct to say "relevant to the report" or "relevant to the issues discussed in the report".

17. Mr. LALLAH considered that the paragraph overlooked an important feature, namely, how the Covenant was implemented in practice. In particular, the inclusion of references to specific court decisions was useful and should be encouraged.

18. Ms. EVATT agreed with that suggestion and, in her turn, suggested the addition of the words "or translated" after the words "These will not be copied further" at the beginning of the second sentence of section 4 (5).

19. Lord COLVILLE endorsed those suggestions.

20. Mr. KRETZMER suggested the addition of the words "where possible translated into one of the working languages of the United Nations" at the end of the first sentence.

21. Lord COLVILLE feared that the costs of translation might deter States parties from producing the annexes which the Committee was asking for.

22. Mr. YALDEN agreed that such a recommendation might prove counter-productive.

23. Lord COLVILLE, referring to Mr. Lallah's remark concerning the need for information on how the Covenant was being implemented in practice, suggested that section 4 (1) (b) might be reworded to read: "The report should deal specifically with the actual situation, the practice and the legal norms as they affect every article in parts I, II and III of the Covenant."

24. Turning to section 5 of the draft, he remarked that, while it was of course desirable that delegations should include representatives of all the necessary disciplines, he was not sure how to convey that idea to States parties without appearing too prescriptive.

25. Ms. CHANET felt that as it stood section 5 was a little too general. She did not believe that States parties would take it amiss if the Committee indicated more clearly the type of delegation that would be best able to answer its questions. She offered to draft an appropriate text.

26. Mr. YALDEN said he would be reluctant to issue instructions to States parties regarding the composition of delegations. They already complained of the burden imposed by reporting obligations, and less well-off countries could not afford to send large delegations. He was in favour of leaving section 5 as it stood.

27. Ms. EVATT agreed with Mr. Yalden. However, she proposed amending the first part of the second sentence to read: "The delegation should therefore be competent to respond."

28. Mr. KLEIN proposed inserting the words "written and oral" before "questions and comments" in the second sentence.

29. Mr. KRETZMER proposed inserting the phrase "have a thorough knowledge of the human rights situation in the State party and" after "therefore" in the second sentence.

30. Mr. AMOR said that, while States were free to decide on the composition of their delegations, the Committee should draw attention, politely but firmly, to certain criteria that needed to be met. The provision regarding the composition of delegations was applicable to both initial and periodic reports.

31. Lord COLVILLE said that a decision by the Committee to combine some of the material relating to initial and periodic reports would call for a major revision and retranslation of the draft guidelines. It might not be possible in those circumstances to include them in the next annual report. However, he suggested that Mr. Amor should present him with a list of guidelines applicable to all reports.

32. He strongly supported Mr. Kretzmer's proposed amendment.

33. Mr. POCAR proposed that the Committee should first agree on the substance of the guidelines and then look into the question of repetition.

34. The CHAIRPERSON said she took it that the Committee endorsed Mr. Pocar's proposal and wished to adopt the following version of the second sentence of section 5: "The delegation should therefore have a thorough knowledge of the human rights situation in the State party and be competent to respond to the Committee's written and oral questions and comments concerning the whole range of Covenant rights."

35. It was so agreed.

36. Mr. KRETZMER, supported by Mr. YALDEN, referring to the third sentence of section 6 (1), said that the Committee's interaction with delegations could not really be described as a constructive dialogue. He suggested that the sentence should be deleted.

37. Mr. KLEIN proposed that in that sentence the word "takes" should be replaced by "should take", and the words "a dialogue" should be deleted. He was in favour of retaining the reference to a "constructive discussion".

38. Mr. AMOR wondered whether it was appropriate to include the reference in the second sentence to non-governmental organizations (NGOs), some of which were merely governmental organizations in disguise.

39. Ms. EVATT said that the Committee's annual report, especially in recent years, had made it clear that both governmental and non-governmental institutions were consulted in connection with country reports. She would be reluctant to omit the reference to NGOs from the guidelines. Their work was of great value to the Committee, which could decide for itself on the reliability or objectivity of individual bodies.

40. She agreed with Mr. Klein's comments on the last sentence. While the results of the Committee's discussion with delegations were not always constructive, the intention was indeed constructive: to promote human rights in States parties.

41. Mr. KRETZMER supported Ms. Evatt's comment on NGOs. The draft guidelines should legitimize the practice of using NGO material.

42. He also agreed that the Committee's intention was to make constructive suggestions to delegations regarding improvements in the human rights situation in States parties. He could support Mr. Klein's proposed amendments to the last sentence.

43. Mr. ZAKHIA said there was a tendency throughout the United Nations system to attach greater importance to civil society, particularly NGOs. The Committee could not be criticized for consulting NGOs because it was quite capable of sifting through the information they provided and discarding unreliable material.

44. Mr. SOLARI YRIGOYEN said he was also in favour of retaining the reference to NGOs. There were plenty of criteria that could be used to establish whether information was objective or slanted. NGOs were making an extremely effective contribution to the work of the United Nations system, particularly in the area of human rights.

45. Mr. LALLAH said that NGOs served as the Committee's eyes and ears and should certainly be mentioned in the guidelines. He had no problem with the reference to a constructive dialogue.

46. Mr. AMOR agreed that NGOs in general had been doing an excellent job. But he had serious doubts about some NGOs that had recently been granted consultative status with the Economic and Social Council.

47. Mr. YALDEN said he was in favour of retaining the reference to NGOs. Since joining the Committee, he had never encountered NGOs which acted as government agents; all without exception had been critical of the Governments of States parties. He supported Mr. Klein's proposed amendments to the last sentence.

48. Mr. BHAGWATI said he was strongly in favour of retaining the reference to NGOs and supported Mr. Klein's proposed amendments.

49. Mr. POCAR said he also wished to retain the reference to NGOs. He agreed with Mr. Klein's proposed amendments but thought that Ms. Evatt's point regarding the Committee's intention to improve the human rignts situation in States parties should also be included. The word "constructive" referred to the goal of the discussion and not to the dialogue itself.

50. Lord COLVILLE proposed the following wording for the last sentence: "The Committee intends this consideration to take the form of a constructive discussion with the delegation aiming to improve the situation pertaining to the Covenant rights in the State."

51. The CHAIRPERSON said she took it that the Committee wished to keep the reference to NGOs and adopt the wording of the last sentence proposed by Lord Colville.

52. It was so agreed.

53. Mr. AMOR, referring to section 6 (2), suggested adding the word "basic" before "agenda" in the first sentence.

54. It was so agreed.

55. Lord COLVILLE proposed that the sentence in square brackets should be deleted.

56. Mr. KLEIN said that he was not opposed to the idea of having answers to the list of issues provided in advance. It might enliven the discussion.

57. The CHAIRPERSON observed that it was impossible to have written replies translated in time for the session. The whole question of converting the oral procedure into a written procedure needed to be discussed in detail in the context of possible changes in working methods. No decision could be taken for the time being.

58. Lord COLVILLE considered that there would be a temptation for States parties to make their written replies extremely long, reading them out at the meeting and leaving no time for additional oral questions.

59. The CHAIRPERSON said she took it that the Committee wished to delete the third sentence of section 6 (2).

60. It was so agreed.

61. Mr. KRETZMER, referring to section 6 (3), stressed the need for consistency with earlier amendments regarding the use of the terms "discussion" and "dialogue". The last sentence concerned the very important issue of follow-up by States parties of the Committee's concluding observations. He suggested that the matter should be dealt with under a separate section, possibly at the end of the guidelines.

62. Ms. EVATT agreed that the last sentence was out of place in the paragraph. Perhaps a more specific reference to the need for follow-up on recommendations could be incorporated under section 8 (3), which emphasized the importance of previous concluding observations as a starting-point for States parties' reports. She further suggested that the second sentence should be rephrased to make it clear that it was the States parties which were expected to disseminate the concluding observations widely, in all suitable languages, with a view to public discussion.

63. Ms. CHANET questioned the need for the last sentence, stressing the importance of consistency between the draft guidelines and the document on consideration procedures adopted by the Committee's Task Force on Working Methods (A/53/40, annex VIII).

64. Mr. POCAR endorsed the comments by Ms. Evatt and Ms. Chanet. He queried the appropriateness of using the verb "publish" in the first and second sentences.

65. Lord COLVILLE said that in the first sentence "publish" should be replaced by "issue" and "dialogue" by "discussion". He further suggested that the second sentence might be amended to read: "It is expected that the States parties will widely disseminate these, in all suitable languages, with a view to public discussion." The last sentence should be deleted and the reference along the lines suggested by Ms. Evatt should be included under section 8.

66. The CHAIRPERSON said she took it that the Committee wished to redraft the paragraph as suggested by Lord Colville.

67. It was so agreed.

68. Mr. AMOR, referring to section 6 (4), said that the introductory phrase "It is the Committee's experience that" added little to the text and should therefore be deleted.

69. Mr. KRETZMER expressed concern about the proposal contained in subparagraph (a). He doubted whether it would be feasible, particularly during the last week of session, for additional information submitted by States parties to be taken into account in the Committee's concluding observations.

70. Mr. LALLAH wondered whether the subparagraph was really necessary at all, for experience showed that it usually took several months to a year for States parties to provide additional information following the consideration of their report.

71. Mr. YALDEN agreed that it was unrealistic to expect States parties to furnish within such a short deadline supplementary information to be taken into account in the concluding observations. He therefore suggested that the subparagraph should be deleted.

72. Mr. ZAKHIA wondered whether the problem might be resolved by requesting States parties to provide such information within a more reasonable time frame.

73. Lord COLVILLE said that his basic idea when drafting paragraph (4) had been to draw attention to the importance of additional information from States parties following consideration of their reports, not only for the purposes of concluding observations but also for inclusion in subsequent periodic reports, in the Committee's annual report and in the secretariat files. Although that point would be raised by the Committee during its discussion with States parties, it would be useful for it to appear in writing somewhere. He acknowledged that subparagraph 4 (a) was somewhat unrealistic and that the whole paragraph could be considerably shortened. He would endeavour to redraft it in the light of members' comments.

74. The CHAIRPERSON said she took it that the Committee endorsed that course of action.

75. It was so agreed.

76. Ms. EVATT questioned the need for section 7 (3).

77. Lord COLVILLE suggested that paragraph (3), which had been lifted from previous guidelines and did not in fact appear to be necessary, should be deleted.

78. The CHAIRPERSON said she took it that the Committee wished to delete paragraph (3) and to retain paragraphs (1) and (2) as they stood.

79. It was so agreed.

80. Mr. SCHEININ took issue with the phrase "it is not usually necessary to report on an article-by-article basis" in section 8 (1). In his view, it was extremely difficult for the Committee to consider reports that were not structured along those lines. Perhaps the second half of the paragraph could be reworded to say that although reports should be compiled on an article-by-article basis, the information submitted under the various provisions of the Covenant should focus on new developments.

81. Lord COLVILLE said that there were two schools of thought on States parties' reports: some members wanted information to be provided on every article of the Covenant, while others preferred a report based on the previous concluding observations which highlighted new developments. He had been under the impression when drafting the paragraph that the majority of members were in favour of the latter option. That issue must be clarified without further delay. He explained that the first half of the paragraph had been added to

meet the particular needs of many States emerging from the former Communist bloc, where there was a whole new approach to human rights. He considered that such a reference was necessary.

82. Mr. BHAGWATI concurred with Mr. Scheinin: reports structured on an article-by-article basis helped to focus discussion and to gauge exactly what changes had taken place since consideration of the previous report. However, reports must include information on new developments, particularly in response to the recommendations made in the Committee's concluding observations.

83. Mr. POCAR said that the two approaches outlined by Lord Colville were not necessarily contradictory: the information provided by States parties in relation to each article of the Covenant should cover new developments and take into account the Committee's concluding observations.

84. Mr. LALLAH agreed on the need for reports structured according to the articles of the Covenant, fearing that some States parties might provide a very scant report on the basis of concluding observations only. One solution would be to point out to States parties that it was not necessary to repeat material provided in earlier reports. In the past many States parties had found neat ways of dealing with articles where there were no new developments to report, thus avoiding a cumbersome text.

85. Ms. EVATT said that while she deplored the repetition of information by some States parties, it was nonetheless desirable for material to be set out on an article-by-article basis. She would stress, however, that information on new developments and in response to the Committee's concluding observations should be included in the report under the relevant article heading. There had been a tendency, particularly with regard to the latter, to deal with it under a separate part of the report. Lastly, she wondered if paragraph (1) might be more appropriately placed after paragraph (5).

86. Mr. YALDEN said it was important for the reports of States parties to follow the sequence of articles in the Covenant while focusing on the Committee's concluding observations and new developments. He suggested that paragraph (1) might be reworded along those lines.

87. Ms. CHANET drew attention to annex VIII of the most recent report of the Committee (A/53/40), which reproduced the document on procedures for the consideration of initial and periodic reports adopted on 9 April 1998 by the Task Force on Working Methods. The fourth sentence of paragraph (8) of that document would seem to meet members' concerns. It read: "Subsequent reports should, on an article-by-article basis, provide information on measures taken to address the Committee's concerns and recommendations contained in the concluding observations, as well as on any new development, if any, in law and in practice."

88. Mr. KLEIN said that, on average, there was a lapse of five years between the consideration of one periodic report and another, so it was likely that States parties would have ample information to convey on new developments in legislation and jurisprudence relating to most of the articles of the Covenant. It was important to impress on States parties the difference between initial and periodic reports; the former should provide more

information on the general human rights situation in the country. He suggested that section 8 should begin with paragraph (3), which appeared to give a better idea of exactly what the Committee was looking for in periodic reports.

89. Lord COLVILLE said it was clear from the discussion that the basic structure of reports should continue to follow the articles of the Covenant, but only to the extent required to respond to concluding observations and new developments. It was still worthwhile mentioning the situation of certain States parties where a major reappraisal of their approach to the implementation of the Covenant had occurred. He recognized, however, that was not an issue of prime importance and need not appear in the first paragraph of the section. He would redraft the paragraph, taking into account all comments made, as well as the sentence quoted by Ms. Chanet from the Task Force document. In the light of the discussion he would need to recast and considerably shorten paragraphs (2) to (7).

90. The CHAIRPERSON said she took it that the Committee endorsed that course of action.

91. It was so agreed.

92. Mr. KRETZMER said that section 8 (8) as currently worded was somewhat misleading since it implied that violations were found with respect to every communication examined by the Committee and resulted in a recommendation for some remedy by the State party.

93. Mr. SCHEININ recalled that there were cases of so-called qualified non-violation where the Committee could merely express its concern about a State party's legislation even when no individual violation was found. For the sake of accuracy and to meet Mr. Kretzmer's concern, therefore, he suggested that the latter part of the paragraph should be amended to read: "include details of the steps taken as a consequence of the views, in particular to afford an appropriate remedy in cases where a violation was found, and to ensure that no such violation again occurs".

94. Lord COLVILLE endorsed that amendment.

95. The CHAIRPERSON said she took it that the Committee endorsed the amendment proposed by Mr. Scheinin.

96. It was so agreed.

97. Following queries by Mr. KRETZMER and Mr. POCAR, Lord COLVILLE suggested that paragraph (9) should be deleted, particularly since a stock phrase requesting State parties to disseminate the Committee's concluding observations and engage in a process of consultation and preparation for subsequent periodic reports was normally included at the end of all concluding observations.

98. It was so agreed.

99. Lord COLVILLE said his intention in including section 8 (10) had been to emphasize the Committee's desire to cooperate with States parties.

100. Mr. KLEIN agreed that the Committee should encourage States parties to engage in a constructive discussion with it on any specific problems they were encountering, so that it could suggest ways of promoting respect for human rights in a particular situation.

101. Ms. CHANET said the suggestion being made seemed to be that the Committee should offer some kind of consultative opinion, which in her view would be dangerous. In the past, requests had been made for such opinions, notably in regard to reservations, to which the Committee had not responded. The general comments should be sufficient; States parties should not also seek the Committee's views on how those comments were to be followed up in practice. Not only did the Committee have no procedure for issuing consultative opinions, but it could also find itself in an awkward situation if it received a communication relating to a specific point on which it had previously issued such an opinion.

102. Mr. BHAGWATI agreed. If the Committee was to take on a consultative role in respect of compliance by one State party with a particular article of the Covenant, it could be placed in an embarrassing position when discussing the report of another State party.

103. Mr. LALLAH said that he would not rule out the approach suggested if, in the course of discussion of its report, a State party raised a question in relation to a particular event. However, he did not think it would be wise to incorporate that approach in the guidelines. He proposed that paragraph (10) should be deleted.

104. It was so agreed.

105. Mr. AMOR asked for clarification as to what decision had been taken regarding the final format of the draft guidelines.

106. Lord COLVILLE said there was no need for the Committee to take a decision at the present stage. He would prepare a new draft presenting a series of options, from which the Committee could choose at its next session.

The public part of the meeting rose at 5.25 p.m.